

REMARKS

Amendments

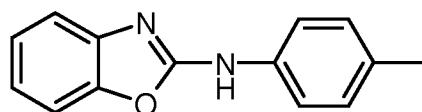
Claim 1 is amended above to incorporate the recitation of claim 4. Claims 6 and 38 are amended to be consistent with the language of amended claim 1. Claim 7 is amended to be in independent form.

Withdrawn Claims

In the Final Office Action, claim 6 was stated to be withdrawn from consideration. However, the Office Action also stated that the examination had been extended to compounds wherein R¹ is H, R² is H, n is 1, m is 1, p is 1, X is O, Y is phenyl, R³ is NHR, and R is an unsubstituted bicyclic aromatic heterocycle having 2 N atoms. Since claim 6 reads on such compounds, it is respectfully submitted that claim 6 is under examination. Thus, it is respectfully requested that the status of claim 6 be changed to “Previously Presented” to indicate that the claim is under examination.

Restriction Requirement

The Restriction Requirement is again respectively traversed. As noted previously, section (f) of Annex B states that the requirements for unity under PCT Rule 13.2 for a Markush grouping will be met if the alternatives of the grouping are have a common property/activity and have a common significant structural element (i.e., a common chemical structure which occupies a large portion of their structure). As applicants note previously, the compounds exhibit a common significant structural element, namely:



In the recent Office Action, it is argued that the common core structure of the compounds is not “large” because, due to the variable groups, the claimed compounds can contain additional ring structures. This assertion does not abrogate the fact that the common core structure with its three rings and amino group is not a large part of the compound

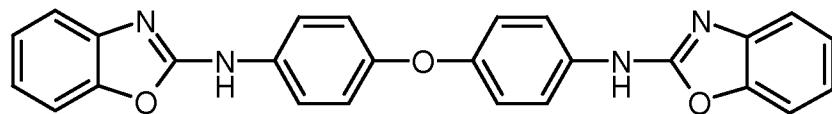
structure. Section (f) of Annex B does not require that large mean a majority or most of the structure. One skilled in the art would recognize that for any of the compounds within the claimed genus, the common core structure is a large part of their structure.

Applicants again request withdrawal of the Restriction Requirement. In any event, since the Examiner has made the Restriction final, applicants will file a Petition with regards to the Restriction.

Rejection under 35 U.S.C. §102(b)

Claims 1-3, 5, 9, and 30-37 are rejected under 35 U.S.C. §102(b) as being anticipated in view of the article by Garin et al.

In the rejection, reference is made to compound 6d, i.e., 2,2'-(4,4'-oxydiphenylenediamino)dibenzoxazole. See Scheme I at page 221, and the description of the synthesis of compounds 6 at page 224. Compound 6d has the following structural formula:



This compound does not anticipate amended claim 1. Compare, for example, the definition of the group R³.

In view of the above remarks, it is respectfully submitted that the disclosure of Garin et al. fails to anticipate applicants' claimed invention. Withdrawal of the rejection is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Brion P. Heaney/

Brion P. Heaney, Reg. No. 32,542
Attorney for Applicants

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Arlington Courthouse Plaza 1
2200 Clarendon Boulevard, Suite 1400
Arlington, VA 22201
Direct Dial: 703-812-5308
Facsimile: 703-243-6410
Attorney Docket No.: MERCK-3155

Date: February 12, 2010